U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 15 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a psychiatrist at New York. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Before the filing of the appeal, attorney represented the petitioner. The petitioner signed the Form I-290B, Notice of Appeal or Motion, and Ms. signed an accompanying statement. The appeal, however, does not include a newly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, to indicate that Ms. continues to represent the petitioner, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a). The AAO contacted Ms. by facsimile on May 30, 2013, to inform her that the AAO could not consider her to be the petitioner's attorney of record unless she submitted the Form G-28 within 15 days. The record contains no response to the notice. Therefore, the AAO will therefore consider the petitioner to be self-represented, and the term "prior counsel" shall refer to Ms.

On appeal, the petitioner submits statements from himself and from prior counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on August 12, 2010. The petition included a statement signed by attorney [redacted] (head of the firm that employs prior counsel) which read, in part:

> The expansive scope of [the petitioner's] salient contributions encompasses not only his immediate field of psychiatry, but also the medical community at large, both nationally and internationally. His original research has already had a direct impact on the field and has gained him nationwide recognition. Through his many publications and presentations, [the petitioner] is not only reaching a large and distinguished audience, but he is in fact reaching countless leading physicians and specialists in the field throughout the country. He is therefore having a profound and direct impact in his field.
>
> . . . Furthermore, he has had his work published in journals and presented at conferences that are national and international. . . .
>
> In addition, [the petitioner] frequently treats patients from different parts of the country on referral. He has worked at tertiary facilities that are constantly referred patients from various regions throughout the country. Because he is able to perform such advanced medical and diagnostic procedures that only a very small percentage of his peers are able to perform, he is called on to treat patients from around the country. In addition, he is constantly teaching the use of his skills to both junior and even senior peers. As such, he is creating a ripple effect that is making the performance of these procedures more widespread nationally.

Mr. [redacted] provided no details and cited no evidence to support the above statements. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Similarly, Mr. [redacted] asserted that the petitioner's "ability to master state-of-the-art technologies and complex research techniques" qualify him for the waiver, but he did not identify any such technologies or techniques. The petitioner's own 14-page *curriculum vitae* does not indicate that his duties at [redacted] where he has worked since 2004, involve either research or "state-of-the-art technologies" The petitioner's description of his own duties indicates a narrow focus on individual patient treatment. The only research experience that the petitioner claimed was a year of "Alzheimer's Research" at [redacted]

Regarding Mr. [redacted]'s assertion that the petitioner "has had his work published in journals and presented at conferences," the petitioner identified two such items in his *curriculum vitae*:

- [redacted]

-

The petitioner submitted photocopied pages from , consisting not of a chapter on seizures, but two appendices. One appendix consisted of "Important Telephone Numbers," while the other was a list of "Normal Laboratory Values." Regarding his claimed chapter in the petitioner did not establish that the second edition remains in use, or, in the alternative, that any subsequent editions of the book have continued to include his chapter. The other named paper, identified but evidently not submitted, apparently dates from the petitioner's clinical training at before he specialized in psychiatry. Anemia is a blood disorder, and its diagnosis does not appear to be the responsibility of psychiatrists.

Mr. stated that the petition included "Letters of Support from independent experts nationwide . . . both from institutions at which [the petitioner] has worked and institutions at which he has not worked." Despite this claim, only one letter is from a witness outside of New York City. That witness, Dr. was director of the California when he wrote his letter on the petitioner's behalf. From 1998 to 2001, however, he worked in a similar program at overlapping with the petitioner's residency there from 1996 to 2000.

All but two of the letters are from late 2002 and early 2003, originally written in support of an O-1 nonimmigrant petition filed at that time. The letters show a number of overall similarities in terms of style and structure. For instance, Dr. , assistant professor at stated:

> In recognition of his extraordinary talent and credentials, [the petitioner] also earned memberships in prestigious medical societies. These include the respected and renowned Indeed, to be selected to such an impressive array of professional societies is testament to [the petitioner's] outstanding abilities as one of a very few at the top of the field.

Dr. , identified above, stated:

> Because of his extraordinary abilities, he . . . has been selected for membership to some of the most respected and renowned societies in the world. These societies include . . . Indeed, [the petitioner's] membership and leadership roles in such an array of organizations are distinct honors and testament to his extraordinary skill, ability, and expertise.

Dr. chief of offered a generally similar evaluation:

> Not only did he win the admiration of his colleagues, he also won admissions into some of the most elite medical organizations in the world, including

All of the quoted witnesses italicized the names of the organizations and indicated that the petitioner's memberships are signs of his standing in the field. None of the witnesses, however, discussed the organizations' admission requirements, which is highly relevant to the credibility of their claims. If one can join a given organization simply by working in a particular field and paying annual dues, for example, then such a membership is not a particular mark of distinction as the witnesses claimed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

One of the two witness letters dated after 2003 is a February 26, 2009 letter from Dr. director of 's letter follows many of the patterns found in the earlier letters. For instance, relating to the petitioner's memberships in medical associations, Dr. stated:

> [The petitioner] has distinguished himself from the vast majority of his peers through membership in some of the most prestigious medical organizations in the world. [The petitioner] is one of the elite physician-scientists in the United States who is a member of the [*sic*] [The petitioner] is also member of the Memberships in these prestigious organizations are only awarded to those physician-scientists who have attained a high level of expertise. The fact that [the petitioner] boasts membership in so many of these highly-esteemed organizations is evidence of his superior reputation as a physician-scientist.

Dr. claimed that the petitioner "is one of the rare experts who can quickly and accurately evaluate a patient's symptoms and determine the precise medical problem or disorder that a patient is suffering from and determine any complications that may be associated with a particular course of treatment." Dr. claimed that the petitioner "is a prolific scientist and his published work has impacted the field nationally. . . . Publications and authorship are the optimum reflection of a high level of knowledge and widespread reputation in the medical community, as only top-tier physicians are able to perform large amounts of research and get their writings published." Dr. identified only one published work by the petitioner, specifically the aforementioned book chapter from 2001. Dr. did not corroborate or elaborate upon his claims regarding the nature of published research.

The petitioner submitted documentation of his membership in several associations, but he did not show that any of those memberships have the significance claimed by various witnesses. He documented the membership requirements of only two named organizations. A membership certificate from the acknowledged the petitioner's membership in the organization, but did not specify a membership class. Article XVI, Section 1 of the Academy's bylaws identify "nine (9) classes of members, which shall be called general, founding, international, member-in-training, fellows, medical students, honorary, affiliate and retired." Section 3 of the same article reads, in part:

> A. **General Members** are those psychiatrists who have completed acceptable training and who have either a valid license to practice medicine or hold an academic, research, or governmental position that does not require licensure and who work with alcoholism and addiction in their practices. . . .
>
> D. **Fellows** shall be those distinguished psychiatrists who have made a contribution of significant value to the field of alcoholism and addictions. . . .
>
> F. **Honorary Members** are those individuals who have dedicated their life's work to the field of alcoholism and addictions and whose contributions mandate membership.

The only membership classes indicating special recognition are "fellow" and "honorary member," and the petitioner has submitted no evidence that he holds either class of membership. The lack of specificity on the petitioner's membership certificate suggests general membership, the only requirement for which is proper credentials to work in the field.

Sections B-1.11 and B-1.12 of the Bylaws of the require only that a prospective member meets at least one of four criteria. One must either "Possess the degree of Doctor of Medicine or its equivalent," "Possess an unrestricted license to practice medicine and surgery," be a "medical student[] enrolled in [an accredited] college of medicine or osteopathy" or participate in an accredited training program.

The membership requirements cited above, submitted by the petitioner, fail to support witnesses' claims that the petitioner's memberships in those organizations demonstrate elevated standing in the field. Therefore, witness assertions about the significance of the petitioner's memberships remain unsupported. As stated previously, unsupported claims cannot meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 165.

The most recent letter, dated May 18, 2010, is from medical director of the Project for stated that the petitioner "is an intelligent and capable clinician making him a valuable asset at a place like " in "an area of that typically has relatively poor access to mental health services."

On January 9, 2012, the director issued a request for evidence, instructing the petitioner to "establish that he has a past record of specific prior achievement with some degree of influence on the field as a whole." The director quoted several witness letters, but found that they lacked "in depth details on what impact the petitioner's work has made or will make in the future."

The petitioner's response included further claims from prior counsel that lacked both detail and corroboration, such as the assertion that the petitioner "has developed a sustained reputation for his ability to deal with tremendous efficiency and precision in emergency and complex situations where there is literally no margin for error and not a minute to waste."

Prior counsel noted the approval of the O-1 nonimmigrant petition mentioned earlier, and stated that this approval constituted USCIS's recognition of the petitioner's stature in his field. The director's decision does not indicate whether the director reviewed the prior approvals when adjudicating the present immigrant petition. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. USCIS need not approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). Acknowledged errors are not binding precedent. *See Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The petitioner submitted copies of certificates and reports documenting his recent work. These materials did not distinguish the petitioner from others in his field. The petitioner also submitted further information about a stated shortage of psychiatrists in the petitioner's area of New York City.

In order to claim a national interest waiver as a physician practicing in a medically underserved area, the petitioner must meet specific conditions set forth in section 203(b)(2)(B)(ii) of the Act and the USCIS regulations at 8 C.F.R. § 204.12. The petitioner did not meet those conditions in the proceeding now under discussion. On June 29, 2012, shortly after he filed the appeal in the current proceeding, the petitioner filed another Form I-140 petition (with receipt number SRC 12 903 21113) on his own behalf. In the 2012 petition, the petitioner sought the same immigrant classification with the national interest waiver, but included the evidence required under the physician shortage provisions. The director approved the petition on April 3, 2013.

The director denied the petition on May 29, 2012, stating that the petitioner failed to submit specific evidence to establish eligibility for the national interest waiver. On appeal, the petitioner signed a statement describing himself in the third person. The petitioner asserts that he merits the waiver through his "leading roles at prominent medical institutions along with his history of original and pioneering publications and significant contributions to the field of psychiatry." The record contains minimal evidence of the existence of his published work, and no evidence that it has been particularly important or influential. The director had stated that citation evidence is one way to establish the impact of published material, but the petitioner, on appeal, submits no evidence along those lines. The

petitioner repeats the assertion that has "had a significant national influence in improving healthcare," but neither explains nor substantiates that claim.

Prior counsel likewise offers a generalized claim of eligibility rather than documentary evidence in support of specific claims. Prior counsel states: "it does not benefit the nation to require [the petitioner] to obtain labor certification because [the petitioner's] role as a cardiologist [*sic*] goes beyond just providing basis patient care. The record reflects that [the petitioner] will continue to work both in performing research and in the field of psychiatry providing clinical care to patients." The record does not contain any evidence that the petitioner's work at since 2004 has involved research, as opposed to clinical patient care. The petitioner has claimed no published work after the 2001 textbook mentioned previously.

The petitioner, on appeal, has not shown that the director erred in denying the petition. Furthermore, the subsequent approval of his 2012 petition, based on the physician shortage provisions of section 203(b)(2)(B)(ii) of the Act, demonstrates that he has now received the benefit that he sought through the present proceeding.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.